

**Trial Testimony Designations for:  
EARL LOVICK TRIAL TESTIMONY  
*Johnson v. W. R. Grace & Co.* (U.S. Dist. Ct., Dist. of Montana,  
Missoula Division, Case No. 88-145-M-HP)  
August 23, 1990**

**Deposition Designation Key**

Arrowood = Arrowood Indem. Co.  
f/k/a Royal Indem. Co. (Light Green)

BNSF = BNSF Railway Co. (Pink)

**Certain Plan Objectors "CPO" = Government Employees Insurance Co.; Republic Insurance Co. n/k/a Starr Indemnity and Liability Co.; OneBeacon America Insurance Co.; Seaton Insurance Co.; Fireman's Fund Insurance Co.; Allianz S.p.A. f/k/a Riunione Adriatica Di Sicurtà; and Allianz SE f/k/a Allianz Aktiengesellschaft; Maryland Casualty Co.; Zurich Insurance Co.; and Zurich International (Bermuda) Ltd.; Continental Casualty Co. and Continental Insurance Co. and related subsidiaries and affiliates; Federal Insurance Co.; and AXA Belgium as successor to Royal Belge SA (Orange)**

CNA = Continental Cas. Co & Continental Ins. Co. (Red)

FFIC = Fireman Funds Ins. Co. (Green)

FFIC SC = Fireman Funds Ins. Co. "Surety Claims" (Green)

GR = Government Employees Ins. Co.; Republic Ins. Co. n/k/a Starr Indemnity and Liability Co.

Libby = Libby Claimants (Black)

OBS = OneBeacon America Ins. Co. and Seaton Ins. Co. (Brown)

PP = Plan Proponents (Blue)

Montana = State of Montana (Magenta)

Travelers = Travelers Cas. and Surety Cos. (Purple)

UCC & BLG = Unsecured Creditors' Committee & Bank Lenders Group (Lavender)

AFNE = Assume Fact Not in Evidence

AO = Attorney Objection

BE = Best Evidence

Cum. = Cumulative

Ctr = Counter Designation

Ctr-Ctr = Counter-Counter

ET = Expert Testimony

F = Foundation

408 = Violation of FRE 408

H = Hearsay

IH = Incomplete Hypothetical

L = Leading

LA = Legal Argument

LC = Legal Conclusion

LPK - Lacks Personal Knowledge

LO = Seeking Legal Opinion

NT = Not Testimony

Obj: = Objection

R = Relevance

S = Speculative

UP = Unfairly Prejudicial under Rule 403

V = Vague

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

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MILDRED E. JOHNSON,

Plaintiff,

-vs-

Civil Docket  
No. 88-145-M-HP

W. R. GRACE AND COMPANY,

Defendant.

**COPY**

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS

Heard in the Courtroom  
United States Courthouse  
Missoula, Montana  
August 23, 1990

BEFORE THE HONORABLE HARRY PREGERSON  
UNITED STATES NINTH CIRCUIT COURT JUDGE

TINA C. BRILZ, RPR  
Official Court Reporter  
United States District Court  
301 South Park - Drawer 10122  
Helena, Montana 59626

1 and spell your last name.

2 THE WITNESS: My name is Earl D. Lovick.

3 L-O-V-I-C-K.

4 CLERK OF COURT: Thank you. You may be seated.

5 DIRECT EXAMINATION

6 BY MR. LEWIS:

7 Q Mr. Lovick, where do you currently reside?

8 A 1021 Idaho Avenue, Libby, Montana.

9 Q Who is your employer?

10 A I'm unemployed. I am retired.

11 Q Well now, Mr. Lovick, that's not quite true, is it?

12 Isn't it a fact that you're employed to attend this trial  
13 for W. R. Grace?

14 A Yes, sir.

15 Q And they're paying you to appear in this trial; is  
16 that true?

17 A Yes, sir.

18 Q And you do consulting work for W. R. Grace from time  
19 to time, and you've done so ever since you've retired; is  
20 that true?

21 A Yes, sir.

22 Q When did you technically retire or retire as a full-  
23 time employee from W. R. Grace?

24 A June 30th, 1983.

25 Q When you retired from W. R. Grace on June 30, 1983,

Libby

1 how long had you been in the service of W. R. Grace or its  
2 predecessor in interest, Zonolite Corporation?

3 A Just over 35 years.

4 Q Since your retirement, have you been asked by W. R.  
5 Grace to -- or paid by W. R. Grace to compile certain  
6 information concerning asbestos-related lung disease  
7 arising out of the Libby operations?

8 A Yes, sir.

9 Q And have you been paid to give depositions by W. R.  
10 Grace in a number of cases similar to this?

11 A Yes, sir.

12 Q And is it true that this is the first case of this  
13 kind to ever be submitted to a jury or to be tried to a  
14 jury?

15 A I don't know.

16 Q Well, Mr. Graham said in his opening statement that  
17 you were the corporate representative. And the reason you  
18 were the corporate representative was because you knew more  
19 than anyone else about what went on at the mine and the  
20 mill. Do you recall that statement he made?

21 A Yes, sir.

22 Q Do you know of any other case that's ever been  
23 submitted to a jury in Montana?

24 A No, sir.

25 Q What's your educational background, sir?

PP  
Obj:  
F

1 the manager, and the up until that time, I had the  
2 responsibility for the accounting plus -- plus some other  
3 responsibilities. And in 1961 an accountant was hired to  
4 do the major part of the accounting work.

5 Q From 1948 to 1961, as an accountant, where was your  
6 office located?

7 A In the town of Libby, City of Libby.

8 Q Is the headquarters for Zonolite or W. R. Grace's  
9 operations located in the town of Libby as opposed to on  
10 the mountain?

11 A For the Libby operations, it was in the City of Libby,  
12 yes.

13 Q So for the entire period of your employment by  
14 Zonolite or W. R. Grace, the headquarters was in the town  
15 of Libby; is that correct?

16 A Yes, sir.

17 Q And that was about 12 miles away from the mill; is  
18 that correct?

19 A By road, yes.

20 Q And how far -- How far as the crow flies?

21 A From -- Between seven and nine miles.

22 Q You know, when I go to Libby, sometimes I stay at a  
23 place called the Venture Motel. Have you ever been there?

24 A Yes, sir.

25 Q You can stand at the Venture Motel and see that white

PP  
Obj:  
R

1 gash, you know, on the side of that mountain. Is that the  
2 mine?

3 A Yes, sir, it is.

Libby

4 Q Do you recall when W. R. Grace acquired Zonolite  
5 Company?

6 A Yes, sir.

7 Q What was the date of that acquisition?

8 A April 20th, 1963.

9 Q And at that time, were you still assistant manager?

10 A Yes, sir.

11 Q Who was your immediate supervisor when you became  
12 assistant manager?

13 A Raymond A. Blake.

14 Q And was he -- Did he maintain the position of manager  
15 of the mill when W. R. Grace acquired the company?

16 A Yes, sir.

17 Q For how long?

18 A Until 1968.

19 Q What happened that caused him to leave the company or  
20 to cease being manager in 1968?

21 A He died.

22 Q What did he die of?

23 A Lung cancer.

24 Q When Mr. Blake died of lung cancer in 1968, did you  
25 become manager of the plant?

PP,  
Obj:  
R

Libby

1 A Yes, sir.

2 Q And was your office still at that time in the town of

3 Libby?

4 A Yes, sir.

5 Q And was your office as assistant manager in the town

6 of Libby?

7 A Yes, sir.

8 Q And your primary function up until that time had been

9 in the area of accounting and business; is that true?

10 A Yes, sir.

11 Q And that was what your formal education involved,

12 accounting, crunching numbers, that sort of thing; is that

13 correct?

14 A Yes, sir.

15 Q And so up until 1968, it would be fair to say that you

16 spent very little time on the mountain; is that correct?

17 A I don't know what "very little time" means, sir.

18 Q Well, you spent the vast majority of your time in the

19 office; is that correct?

20 A Yes.

21 Q And in fact, I've seen some exhibits here, and to

22 speed things up, I'll try to deal with it in a general

23 way. There are exhibits here where you folks at the mine

24 tried to differentiate between the various jobs as to who

25 had the most dust exposure; right?

PP  
Obj:  
R;  
F;  
BE

Libby

PP  
obj:  
R

1 A Yes, sir.

2 Q Would you agree with me that the place that had the  
3 least dust exposure in the whole company was the office  
4 where you worked in the town of Libby?

5 A Might I ask when you say "the whole company," are you  
6 speaking of the Libby operation?

7 Q That's good point. I apologize. Let me change the  
8 question. Good point. As to the operations in Libby, the  
9 place in the company that had the least dust exposure,  
10 would that be the office where you worked in the town of  
11 Libby?

12 A Yes, sir.

13 Q And when you became manager of the company in 1968,  
14 how long did you hold that position?

15 A Until 1971.

16 Q What happened in 1971 that resulted in your changing  
17 your position.

18 A In 1971, there was a man brought in from another  
19 branch of the Grace organization to head up the Libby  
20 operation while they were building a new mill and getting  
21 that on stream.

22 Q Is the mine or the mountain where the mine is located  
23 sometimes referred to as Vermiculite Mountain?

24 A Yes, sir.

25 Q In 1971, you had already been diagnosed as having

Libby

PP  
Obj:  
R

1 asbestos yourself; is that true?

2 A No, sir, that's not true.

3 Q Did you in fact have surgery for asbestos-related  
4 pleural disease in the early 1970s?

5 A Yes, sir.

6 Q When?

7 A To the best of my recollection, it was 1972 or 1973.

8 Q And it's true, is it not, that virtually all your time  
9 with the company up until that time that your lung disease  
10 was diagnosed was spent at the office in downtown Libby; is  
11 that true?

12 A Well, I must -- I must say that, again, I don't know  
13 what you mean by all of my time. I'd like to explain a  
14 little bit. For six months, approximately, in 19 -- in  
15 1946, I worked at the mine primarily as a truck driver.  
16 And after I came to work in 1948, on a full-time basis with  
17 the title of accountant and later as assistant manager, I  
18 made frequent trips to the mining and milling operation and  
19 spent time at that operation.

20 Q But I think you just testified that the vast majority  
21 of your time was spent in the office at the safest place in  
22 the company, downtown Libby; is that true?

23 A Yes, sir.

24 Q And did you have surgery to remove pleural thickening  
25 or some such thing from your lungs in the early '70s?

Libby

1 A It was -- It was -- The purpose of the surgery was to  
2 remove pleural plaque, yes, sir.

3 Q Now, you continued in your employment up until 1983 as  
4 a full-time regular employee; is that correct?

5 A Yes, sir.

6 Q Did you hold any other positions besides assistant to  
7 the general manager after the new man was brought in in, I  
8 think you said 1971?

9 A Well, no, I didn't. In the period the position  
10 essentially remained the same, but the title changed, I  
11 think, to when I retired it was manager of administration.  
12 But the duties and responsibilities really didn't change.

13 Q Would you tell the jury what the business of Zonolite  
14 and W. R. Grace was in Libby, Montana during your tenure of  
15 employment there in general terms. What were you folks  
16 doing?

17 A Well, the purpose of the operation at Libby was to  
18 mine vermiculite from Vermiculite Mountain. It was mined  
19 by power shovels or frontend loaders, loaded onto trucks  
20 and haled to a transfer point where it was conveyed to the  
21 mill. And over the years there were -- there were  
22 different mills.

23 And the milling operation, the purpose of this was to  
24 concentrate the vermiculite from the total mill feed. And  
25 by "concentrate," I mean to get the vermiculite in as pure

PP  
Obj:  
R

Libby

1 a form as possible and remove as many of the contaminants  
2 and other materials from the ore which were not of a value  
3 in the final product which was used primarily in the  
4 building industry.

PP  
obj:  
R

5 Q Thank you, sir. Then if I understand -- Well, let me  
6 ask you one other question: Did you have an expansion  
7 facility for the vermiculite in the Libby area?

8 A Yes, sir.

9 Q Do you still have one there?

10 A No, sir.

11 Q When did that cease?

12 A In 1969, I believe.

13 Q So up until 1969, you had a facility where you  
14 expanded the raw vermiculite into its usable form; is that  
15 true?

16 A Well, that's true. But I must say that it was only a  
17 very small part of the production that was expanded in the  
18 Libby expanding plant.

19 Q I think I understand. That means your two principal  
20 functions there were, first, mining the ore; right? Is  
21 that one of them?

22 A Yes, sir.

23 Q And then what you called concentrating the vermiculite  
24 in the mill; is that true?

25 A Yes, sir.

PP  
obj:  
R

Libby

PP  
obj:  
R

1 Q Did the mining operations continue in that same  
2 general pattern throughout your direct employment with  
3 Zonolite and W. R. Grace up until 1983?

4 A The same general manner, yes, sir.

5 Q Now, I know that there were changes in the way you  
6 milled the ore, and I'm not implying otherwise, and I'll  
7 get into that in a minute; but the same functions were  
8 there. You mined it and you milled it, right?

9 A Yes, sir.

10 Q Is this an open pit mine?

11 A Yes, sir.

12 Q Would you tell the jury what that means.

13 A Well, it means that all of the mining is above  
14 ground. The mine was literally located on the top of a  
15 mountain, and the ore was removed in layers, if you will,  
16 and -- which we referred to as levels from the top going  
17 down. These levels varied in height over the period I was  
18 there, depending on the type of the equipment that we  
19 used.

20 The equipment generally got larger in size, but the  
21 levels ranged from about 18 feet to about 24 feet in  
22 height, and the ore would be taken from the face on these  
23 levels and loaded into trucks, and as one level would be  
24 fully mined, then they would drop down and mine on the  
25 level below it.

Libby

PP  
obj:  
R

1 Q So there weren't tunnels involved in the mining  
2 operations generally?

3 A No, sir.

4 Q What kind of a mill did you have when you came on  
5 board in 1984 -- excuse me -- 1948 to concentrate raw  
6 vermiculite?

7 A A dry mill.

8 Q Okay. What does that mean in general terms?

9 A It means that the ores that came from the mine was put  
10 through a dryer to take off the surface moisture, and all  
11 of the work which was done to that ore in the mill in the  
12 concentration process was done by a dry process. There was  
13 no water or any other moisture added to it.

14 Q Was that the only mill in 1948?

15 A Yes, sir.

16 Q And was that in one building?

17 A Yes, sir.

18 Q Was the building in multiple levels?

19 A Yes, sir.

20 Q How many floors?

21 A Well, to the best of my recollection, there were about  
22 six floors.

23 Q And was this known as the old dry mill?

24 A Yes.

25 Q Okay. When you started in 1948, is it true that the

Libby

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PP  
Obj:  
R

1 concentrate which was produced in the mill from the ore fed  
2 into the mill was in the neighborhood of 500 tons per day?

3 A Yes, sir.

4 Q So the end product, concentrated vermiculite, was 500  
5 tons a day? That was the production?

6 A That was the approximate production, yes, sir.

7 Q Did that production increase as time went by?

8 A Yes, sir.

9 Q To what level did that increase?

10 A Well, when I retired -- When I retired in 1983, they  
11 were producing approximately a thousand tons a day.

12 Q 1983?

13 A Yes.

14 Q And that would be a thousand tons per day of  
15 concentrated vermiculite?

16 A Yes, sir.

17 Q Did the production ever exceed that between 1948 and  
18 1983?

19 A Well, it would exceed it -- It would exceed it in this  
20 respect: When I say a thousand tons a day, that was an  
21 approximate average. They could produce maybe twelve  
22 hundred tons one day or eleven hundred tons, but  
23 essentially, the production never exceeded that -- in that  
24 area of tonnage.

25 Q Over the years, they changed from a dry mill process

Libby

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PP  
Obj:  
R;  
F

1 to a wet mill process; is that correct?

2 A Yes, sir.

3 Q When did they put in the first wet mill?

4 A The first wet mill was put on stream in 1954.

5 Q And did the -- Did that mean that was the end of the  
6 dry mill, or was that in addition to the dry mill?

7 A That was in addition to the dry mill.

8 Q So in 1954 when the first wet mill came on, you  
9 continued to use the dry mill full bore; is that correct?

10 A Yes, sir.

11 Q And that expanded your production substantially; is  
12 that correct?

13 A No, sir, it did not. It increased the production  
14 somewhat, but it didn't increase it substantially.

15 Q What was the increase?

16 A Well, I don't believe -- possibly a hundred tons a  
17 day.

18 Q Okay. Now, when was the new wet mill put in place?

19 A Well, it was built in the early '70s. It went on  
20 stream full-time in early 1974.

21 Q So early 1974, the wet mill went on stream?

22 A Yes.

23 Q The new one?

24 A Yes, sir.

25 Q And I heard Mr. Graham say in his opening statement --

Libby

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PP  
Obj:  
R

1 Excuse me.

2 I want to know if you agree with this: You folks  
3 admit that at least by 1967 you knew then you had a serious  
4 asbestos-related disease problem in that mill? Do you  
5 agree with that?

6 A No. I don't believe I agree with that -- those  
7 terms.

8 Q Do you agree that at least by 1967, there was  
9 significant evidence that asbestosis or asbestos-related  
10 disease was a serious health hazard to your employees?

11 A I think it's true that by 1967, we recognized that  
12 there was -- that there was a problem with asbestosis with  
13 some of our employees, yes.

14 Q Isn't it a fact that you knew for many years before  
15 that that you had a problem with asbestos-related disease  
16 among your employees.

17 A No, sir. I don't think that I agree with that  
18 statement.

19 Q Okay. Well, we'll get into that more later then.  
20 But in any event, you knew in 1967 you had a problem.  
21 And the wet mill didn't come on line until 1974; is that  
22 correct?

23 A Yes, sir.

24 Q When you got the new wet mill on, did that increase  
25 your production --

Libby

1 A Yes, sir.

2 Q -- to about a thousand tons per day?

3 A Yes, sir.

4 Q Okay. Mr. Lovick, for every ton of vermiculite, that  
5 is, vermiculite concentrate that you produced at that mill,  
6 you had to go through a lot of ore; is that correct?

7 A Yes, sir.

8 Q Would you agree with me that for every ton of  
9 vermiculite concentrate, it took about 22 tons of ore?

10 A That is a -- Over the period, that -- That figure  
11 varied, but that is roughly an accurate figure, and I say  
12 "roughly an accurate figure," because you'd have to take a  
13 particular period of time to put on it. But an average, I  
14 would say over the years, an estimated 5 percent of the  
15 material that was moved in the mine became a salable  
16 product. So that would be -- that one ton from every 20  
17 tons.

18 MR. LEWIS: Well, could I have Exhibit G-42,  
19 please.

20 I have another book up there. May I approach the  
21 witness with this exhibit, Your Honor?

22 THE COURT: Yes.

23 Q (BY MR. LEWIS) I have a copy of this exhibit, sir,  
24 and I'll direct your attention to the portion of that  
25 exhibit that I want to question you about.

PP  
obj:  
R;  
BE

Libby

pp  
obj:  
R;  
BE

1 Now, is G-42, a document -- Well, the first page of  
2 G-42 is a confidential letter or note to C. N. Graff from  
3 R. M. Vining dated July 24, 1969; is that correct?

4 A Yes, sir.

5 Q And who was Mr. Vining.

6 A Mr. Vining was president of construction products  
7 division of which Zonolite operation at Libby was a part  
8 of.

9 Q So to explain that to the jury, after W. R. Grace  
10 acquired Zonolite Company, Zonolite became a division  
11 within the Grace family of companies or divisions; is that  
12 true?

13 A Zonolite became a part of a division within the  
14 Zonolite family.

15 Q So Zonolite was a subdivision of this division you  
16 just named which Mr. Vining was the head of; is that  
17 correct?

18 A Yes.

19 Q And what was that division?

20 A Construction products division.

21 Q And where was their headquarters?

22 A In Cambridge, Massachusetts.

23 Q Okay. Turn to the second page of this document. This  
24 says, "Zonolite vermiculite ore review," dated July 24,  
25 1969, by Harry Brown and Floyd Stuart. Is that correct?

Libby

1 A Yes, sir.

2 Q On page Roman numeral four dash one of that report, it  
3 talks about "bottlenecks are eliminating factors at  
4 Zonolite operations in Libby."

5 Do you see that?

6 A Yes.

7 Q And under three here it says, "Higher mine waste ore  
8 ratio exists at Libby. At Libby the mine moves  
9 approximately 22 tons of ore for each ton of concentrate  
10 produced"; is that correct?

11 A Yes, sir.

12 Q Would you agree with that generally?

13 A Yes, sir, I would.

14 Q Okay. What percentage of that ore was tremolite  
15 asbestos?

16 A I don't know.

17 Q Of that 22 tons, what percentage would be asbestos?

18 A I don't know.

19 Q Would 3 percent sound about accurate?

20 A I don't know, sir.

21 Q Plaintiff's Exhibit 40.1. What is that document?

22 A It's a letter or report from R. A. Schneider to R. M.  
23 Vining.

24 Q And who was Mr. Schneider?

25 A Mr. Schneider was chief engineer of construction

PP  
obj:  
R;  
BE

PP  
Obj:  
R;  
BE

1 products division.

2 Q In Cambridge, Massachusetts?

3 A Yes, sir.

4 Q And this letter is personal and confidential, March 3,  
5 1969 letter entitled, "Insight to Environmental Dust  
6 Control for Vermiculite Mining Expanding Operations for" --  
7 to you among others; is that correct?

8 A Yes, sir.

9 Q And did you actually receive this personal and  
10 confidential document?

11 A Yes, sir.

12 Q Okay. I'll get back to that first page later, but I  
13 want to direct your attention to the fourth page where it  
14 says "introduction problem." Do you see that?

15 A Yes.

16 Q It says, "The vermiculite mine at Libby contains about  
17 3 percent tremolite, a type of asbestos," do you see that?

18 A Yes.

19 Q Okay. So the ore was about 3 percent asbestos; is  
20 that correct?

21 A This is what it states here, yes.

22 Q Do you have any reason to question that?

23 A No, sir.

24 Q So if the production was 1,000 tons of concentrated  
25 vermiculite a day after the wet mill was put in, that means

Libby

PP  
Obj:  
R

1 that there would have been 21,000 tons of waste material  
2 that had to go through that mill and be disposed of; is  
3 that true?

4 A Yes, sir.

5 Q And what's 3 percent of 21,000 tons? Would you agree  
6 with me that's about -- about 660 tons of asbestos a day  
7 that had to be discarded through that plant?

8 A About 630.

9 Q I won't argue with that.

10 A Yeah.

11 Q A lot of asbestos; right?

12 A Yes.

13 Q Where did that asbestos go? Where was it discarded?

14 A Well, it was discarded in one of two -- one of two  
15 places. It would have been -- one of three places,  
16 actually. It would have been discarded in the mine dump in  
17 lower grade material which would never have gone to the  
18 mill.

19 And the second place it would have been discarded  
20 would have been in the mill tailings of which there were --  
21 there were two mill tailing circuits, a coarse circuit and  
22 a fine circuit. And they were discarded -- The coarse  
23 tailings were discarded -- well, at that time, they were  
24 all discarded on the side of the mountain.

25 And the third place they would have gone is that some

Libby

1 of the tremolite would have been retained in the  
2 concentrate.

pp  
obj:  
R

3 Q Well, that's not quite true, is it? Isn't it a fact  
4 that some of the fine tailings went into a stream that ran  
5 right into the Kootenai River for a long time?

6 A It was discarded on the side of that mountain, as I  
7 stated, and some of that material, yes, did end up in the  
8 Kootenai River.

9 Q Did not you testify in your deposition that some of it  
10 was discarded into a creek that went by the mill?

11 A It ran down the mountain into a creek, yes.

12 Q What was the creek?

13 A Rainy Creek.

14 Q Did that run right into the Kootenai?

15 A Yes, sir.

16 Q About 12 miles above the town of Libby?

17 A Well, about -- roughly a little over five miles above  
18 the --

19 Q Closer than that than, five miles from Libby?

20 A Yes, sir.

21 Q But in any event, there were tons and tons of asbestos  
22 waste material, just the asbestos portion, were put over  
23 the side of that mountain everyday of that mill's  
24 operations; is that correct?

25 MR. GRAHAM: Your Honor, I don't know whether now

Libby

1 would be an appropriate time to make an objection as to  
2 Mr. Lewis' and Mr. Lovick's calculations, but so we don't  
3 mislead the jury further, I think if you take twenty-one  
4 hundred tons of material and multiply it times point zero  
5 three, you come out with substantially less than 630 tons.

6 MR. LEWIS: Twenty-one thousand tons.

7 MR. GRAHAM: Okay. I'm sorry.

8 Q (BY MR. LEWIS) The witness has testified 630 tons of  
9 asbestos a day; right?

10 A Yes, sir.

11 MR. LEWIS: Okay?

12 MR. GRAHAM: I'm sorry. I misunderstood.

13 Q (BY MR. LEWIS) This might be informative to the  
14 jury. I've got some photos that were given to me by your  
15 counsel here. I'd like to have them marked.

16 MR. LEWIS: G-101 through --

17 CLERK OF COURT: G-1 --

18 MR. LEWIS: One-oh-one.

19 CLERK OF COURT: One-oh-one. Okay.

20 MR. LEWIS: One-oh-tow. One-oh-three.

21 One-oh-four. One-oh-five, and 106. And there's the  
22 order.

23 While she's marking, I think I can proceed, Your  
24 Honor, if that's all right.

25 May I approach the witness?

PP  
Obj:  
R;  
BE

Libby

1 THE COURT: Go ahead. Yes.

2 Q (BY MR. LEWIS) Mr. Lovick, I'm handing you what is a  
3 photo which has been marked for purposes of identification  
4 Plaintiff's Exhibit G-101. Do you recognize that photo?

5 A Yes, sir.

6 Q Did you take that photo?

7 A No, sir.

8 Q Do you know who took it?

9 A No, sir.

10 Q Do you know what it represents?

11 A Yes, sir. It shows a sample of No. 1 concentrate  
12 vermiculite in its concentrated form and it's in its  
13 expanded form.

14 Q And there's a ruler there; is that correct?

15 A Yes.

16 Q On the right side of the ruler is the concentrated  
17 form of vermiculite; is that correct?

18 A Yes.

19 Q And on the left side is the expanded form?

20 A Yes.

21 Q And that's a coarser grade of vermiculite; is that  
22 true?

23 A That's the largest commercial grade that they market  
24 at this time.

25 Q Does that accurately portray concentrated and expanded

PP  
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Libby

1 vermiculite of that coarse grade?

2 A I would say that it did, yes.

3 MR. LEWIS: Move admission of Plaintiff's Exhibit  
4 G-101.

5 MR. GRAHAM: No objection, Your Honor.

6 THE COURT: Be received.

7 Any objection to receiving these other photos that  
8 have been marked?

9 MR. GRAHAM: No, Your Honor. In fact, we had  
10 submitted them as Defendant's Proposed Exhibits included in  
11 our packet.

12 THE COURT: All right. What are the numbers on  
13 them again?

14 MR. LEWIS: Okay. I now hand you --

15 THE COURT: Just give me the span of the numbers.

16 MR. LEWIS: G-102 through G-107.

17 THE COURT: They're all admitted.

18 MR. LEWIS: Thank you, Your Honor.

19 THE COURT: All right.

20 Q (BY MR. LEWIS) I'm handing you G-102 through G-107.

21 Now is it true that G-102 through G-106 all show different  
22 forms of or grades of vermiculite?

23 A Yes, sir. They're different grades or different  
24 sizes. One-oh-six is not the particular grade. It's just  
25 a piece of vermiculite.

Libby

1 Q It's quite a large piece of vermiculite?  
2 A Yes.  
3 Q And it's expanded so the jury can see that?  
4 A Yes, sir.  
5 Q Okay. Now, G-107 is not vermiculite at all; is it?  
6 A No, sir.  
7 Q What is that?  
8 A That is tremolite.  
9 Q Tremolite asbestos?  
10 A Yes, sir.  
11 Q And it's sort of a white color; is it not?  
12 A Yes, sir.

13 MR. LEWIS: May I give these to the jury to look  
14 at?

15 THE COURT: Yes. Just hand them to the jury, and  
16 they'll pass them among themselves.

17 MR. LEWIS: Thank you, Your Honor.

18 Q (BY MR. LEWIS) Now, that white tremolite or whitish  
19 substance, tremolite asbestos, is that what makes up  
20 the white dust that would coat the mills where the men  
21 worked?

22 A Well, generally, the tremolite which is found up there  
23 is the white material that forms the dust in the area, yes,  
24 sir.

25 Q Now, in the old dry mill, that was a terribly dusty

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1 place; was it not?

2 A Yes, sir.

3 Q And it had that tremolite asbestos in very fine dust  
4 from top to bottom in all those six levels you testified  
5 about; is that true?

6 A Yes, sir.

7 Q And you knew that and saw that when you first went to  
8 work there in 1948; is that true?

9 A Yes, sir.

10 Q And in fact on the top levels it would accumulate on  
11 the rafters four or five inches deep from time to time; is  
12 that true?

13 A Well, in regard to this entire line of questions and  
14 my answers, the tremolite would be one of the ingredients  
15 of the dust which would accumulate.

16 Q The dust would be white, right?

17 A Not -- Not necessarily. The dust would be generally  
18 more of a golden color than a white or a gray color.

19 Q Okay. What about when you got to the wet mill  
20 process? Was there tremolite asbestos in the wet mills?

21 A Yes. Because all of the ore came into the wet mill.  
22 It was -- It was fed into the wet mill before any of it  
23 went to the dry mill, and the tremolite was one of the  
24 ingredients in the mill feed.

25 Q And would there be -- In the wet mill, would there be

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1 a very fine mud that would develop and cover some of the  
2 machines?

3 A In some areas, yes.

4 Q Well, like for, say, a millwright, would a millwright  
5 have to get down in that mud from time to time and get it  
6 on his clothes to do his work, or do you know?

7 A Well, in some of the work that a millwright would be  
8 required to do, he would certainly come in contact with  
9 some of the mud, yes, sir.

10 Q And it would be the whitish mud that we're talking  
11 about, right?

12 A Possibly.

13 Q Just so that we can get a perspective, you said, I  
14 think, that the coarse waste would be discarded up at the  
15 mine level; is that correct?

16 A Well, no, sir. The mill was actually, elevation-wise,  
17 was located below the mine. And the tailings from the mill  
18 would be discarded at the mill level, which were somewhat  
19 lower than the mine.

20 Q Okay. I understand that. Maybe I misspoke or you  
21 misunderstand me. I apologize for lack of clarity in the  
22 question. But there was a waste disposal area at the mine  
23 itself above the mill; is that correct?

24 A Yes. For mine waste there was.

25 Q All right. And that would be discarded in one

Libby

1 direction off the mountain; right?

2 A Well, one --

3 Q Would it be discarded over the side of the mountain?

4 A It would be discarded over the side of the mountain,  
5 yes, sir.

6 Q Right now how many miles down that mountain does that  
7 waste area go?

8 A Well, I'm not sure. Possibly the better part of a  
9 mile.

10 Q And how about the waste area or the tailings that come  
11 out of the mill? How far down the mountain does that go?

12 A Probably in the neighborhood of a mile.

13 Q And that's that white gash that you see when you look  
14 up from Libby; is that right?

15 A Yes, sir.

16 Q And those fine tailings continued to be discarded into  
17 the Kootenai River at least until 1970 or 1971; is that  
18 true?

19 A Yes, sir.

20 Q And then in '70 and '71, you folks built a impoundment  
21 dam; is that true?

22 A Yes.

23 Q And that's where the fine tailings were discharged?

24 A Yes.

25 Q But the tailings were never buried; were they?

PP  
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R

PP  
Obj:  
R

Libby

1 A No, sir.

2 Q All tailings were always open to exposure from the  
3 air; right?

4 A Yes, sir.

5 Q And these tailings would include tremolite asbestos,  
6 Do you agree with that?

7 A Yes.

8 Q Were you ever able to get all of the asbestos out of  
9 the final concentrated tremolite?

10 A No, sir.

11 Q So in those photos that the jury's just seen, those  
12 first six photos that have concentrated vermiculite and  
13 expanded vermiculite, they still contain some asbestos; is  
14 that true?

15 A It's possible that they contain some asbestos.

16 Q Do you know a percentage of that tremolite -- or  
17 excuse me, that vermiculite is asbestos?

18 A No, sir.

19 Q Mr. Lovick, you know as you sit right now that the  
20 asbestos mined at Libby is dangerous to your employees'  
21 health. Is that true?

22 A Yes, sir.

23 Q Would you agree with me that it is in fact, you know  
24 now, at least, that it is in fact a hazardous material. Is  
25 that true?